



August 29, 2013

Washington State Department of Ecology  
Attn.: Fran Sant, SEPA Rulemaking Coordinator  
300 Desmond Drive  
Lacey, WA 98503-1274

Sent electronically to: [fran.sant@ecy.wa.gov](mailto:fran.sant@ecy.wa.gov)

Dear Ms. Sant:

The Port of Longview (Port) echo's the sense of rising concern that the Washington Public Ports Association (WPPA) expressed concerning the Department of Ecology's ("Ecology") recent document entitled *Draft Status Report: 2013 Rulemaking for Chapter 197-11 WAC, SEPA Rules* (the "*Status Report*"). While the ports were not included as members of the advisory committee, which we must assume as an oversight as ports are considered lead agencies under the rule, several of the provisions outlined in the *Status Report* will have severe consequences at our port terminals and related facilities if enacted.

WPPA has expressed, on behalf of the ports of Washington, in previous communications with Ecology both in writing and personally our specific concerns regarding the language proposed in the *Status Report* as well as our frustration with the process as it appears to be deviating from the Legislature's directive to "update, but not decrease"<sup>1</sup> categorical exemptions as outlined in SB 6406 (2011-12), the enacting legislation on which this rulemaking is based. The Port concurs with their evaluation.

The Port is extremely alarmed with Ecology's proposals concerning repair, remodeling and maintenance activities related to in-water maintenance work, dredging and bulkheads (see *Status Report*, pg. 13). We believe that the WPPA in its August 13, 2013, letter details succinctly our concerns in relation to our port operations, and therefore we will not repeat that detail, but refer you to that letter with our full support.

We will emphasize that removal of the maintenance and repair exemption will increase confusion and permitting delays in Washington State's environmental permitting process which will have direct impacts on how quickly the Port can react in emergency and non-emergency maintenance situations, as well as direct impacts to efficient import and export of goods. Additionally, the removal will conflict with the state's Hydraulic Project Approval statute, which allows marinas and marine terminals to perform "maintenance or repair of shoreline armoring or bank protection", as well as the Shoreline Master Act, RCW 90.58.030(3)(c), which provides a *statutory* exemption for normal maintenance and repair of existing structures within the shoreline environment.

Likewise, federal agencies with jurisdiction over in-water construction have recognized that their review of minor and routine maintenance activities such as pile replacement and minor bulkhead repair should be streamlined. In the United States Corps of Engineers Section 10/404 regulatory program, these activities are allowed under the nationwide permitting program and are often approved through a letter of permission. The federal fisheries agencies with oversight under the Federal Endangered Species Act have also recognized that many minor and routine activities should be allowed with a minimum of bureaucratic procedures. Furthermore, these projects and activities are reviewed using programmatic biological evaluations.

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<sup>1</sup> HB 6406 (2011-12), Sect. 301(3)(a)(i), pg. 42.



The Port is currently in the process of going through USACE Nationwide Permit review for maintenance and repair to maintain fender piles (bumper piles) and post/piles for six out of eight of our berths. The permitting process began in March 2013, and has to yet to conclude; there is already rigorous review as part of any maintenance and repair project. The Port has also attained an HPA as well as a local shoreline master plan exemption; adding additional SEPA review would only increase the permitting timeline, and perhaps delay a simple routine maintenance project with no additional environmental gain.

Further, we oppose Ecology's proposal to "include a specific percentage of the structure to be replaced as a threshold for the maintenance exemption". This new threshold would introduce a new and confusing threshold standard, and is arbitrary in nature. The Port currently has 157 fender piles that need replacing in 2013, next year there may only be 50; where would the threshold be drawn? Fender piles are untreated pilings that are used to cushion a ship's impact to a berth. If we are unable to replace these, because of a prolonged permitting process, then those particular berths would no longer be viable until such time as the piles were replaced. Pilings and fender piling also serve an important role in holding up and protecting structures that are subject to heavy loads where longshore and other workers labor under conditions where worker and dock safety is a fundamental priority.

Moreover, what other unforeseen ramifications to port operations could occur if ports had to go through SEPA when they did maintenance activities? Would the SEPA review look mainly at the piles or bank stabilization activities in a vacuum? Or would there have to be extensive evaluation of the types of activities that go on at those facilities? Would port economic activities come to a halt while environmental review was being conducted on for example, steel imports that go across that berth that needed repair?

The Port appreciates the opportunity to comment and we request that Ecology takes into consideration our remarks, as well as the well laid out and detailed comments provided by WPPA in their letter dated August 13, 2013. Increasing regulatory oversight through SEPA, on a routine maintenance process, is inconstant with other state regulations, does little in the way of benefiting the environment, and may create unforeseen consequences.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Geir-Eilif Kalhagen', written over a horizontal line.

Geir-Eilif Kalhagen  
Chief Executive Officer

Cc via email:

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